City of Lafayette Staff Report

For:	City Council
By:	Christine Sinnette, Senior Planner
Date Written:	April 20, 2009
Meeting Date:	April 27, 2009
Subject:	Authorize City Manager to Execute the Standard City of Lafayette Agreement for Installation and Maintenance of Existing and New Landscaping and Stormwater Management Facilities Operations and Maintenance and Right of Entry Agreement

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It is standard practice for the City to require a property owner as a condition of approval of a development application to enter into agreements with the City to maintain existing and new landscaping and to maintain on-site stormwater management facilities. These are standardized agreements that have been approved as to form by the City Attorney. The Landscape Agreement has been in use since 1999. Use of the Stormwater Agreement began last year in response to State and Regional mandates for installation of permanent stormwater management facilities like grassy swales and detention basins on private property. Once signed by the property owner, these agreements are agendized on the consent calendar for the City Council's consideration and approval.

In order to streamline this process and eliminate the need for staff to prepare staff reports and agenda packets for such routine matters, staff is requesting that the City Council authorize the City Manager to execute these agreements on behalf of the City. The City Attorney has determined that it is not necessary for these agreements to be approved by the City Council but recommended that the Council could authorize the City Manager to execute the Agreements by resolution. If an Agreement is to be modified for a particular project, the Agreement will be brought to the City Council for review and consideration.

Fiscal Impact

None.

Recommendation

Adopt Resolution 2009-20 authorizing the City Manager to execute the City's standard Agreement for Installation and Maintenance of Existing and New Landscaping and City's standard Stormwater Management Facilities Operations and Maintenance and Right of Entry Agreement.

Attachments

Resolution 2009-20
Agreement for Installation and Maintenance of Existing and New Landscaping
Stormwater Management Facilities Operations and Maintenance and Right of Entry Agreement

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

In the Matter of:

Authorizing the City Manager to Execute)
Landscape Maintenance and Stormwater) Resolution No. 2009-20
Maintenance Agreements)
)

RECITALS

A. It is standard practice for the City to require a property owner as a condition of approval of a development application to enter into agreements with the City to maintain existing and new landscaping and to maintain on-site stormwater management facilities ("Agreements").

B. These Agreements, "Agreement for Installation and Maintenance of Existing and New Landscaping" and "Stormwater Management Facilities Operations and Maintenance and Right of Entry Agreement", are standardized agreements that have been approved as to form by the City Attorney. Once signed by the property owner, these agreements are agendized on the consent calendar for the City Council's consideration and approval. Approved Agreements are then executed by the Mayor of the City of Lafayette.

C. In order to streamline the process and eliminate the need for staff to prepare staff reports and agenda packets for such routine matters, staff requests that the City Council authorize the City Manager to execute these Agreements on behalf of the City.

Now, therefore, the City Council of the City of Lafayette resolves that:

1. The Lafayette City Manager shall be authorized to execute the City's standard "Agreement for Installation and Maintenance of Existing and New Landscaping" and "Stormwater Management Facilities Operations and Maintenance and Right of Entry Agreement" on behalf of the City.

2. If any Agreement has been modified, it will be brought to the City Council for review and consideration.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting held on April 27, 2009, by the following vote to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

Record at the request of City of Lafayette
Return to:
City of Lafayette
Attn:
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Property Owner(s) hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, property address, (Assessor's Parcel Number APN) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On Approval Date, the City granted a Design Review Approval to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Design Review Approval, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on Approval Date, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Design Review Commission proceedings conducted by the City (Planning File No. File Number) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the # condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Property Owner(s)
Street Address
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Design Review Commission proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

_____

Property Owner, Property Owner

_____

Property Owner, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

Recording Requested By:
CITY OF LAFAYETTE

Return to: **City of Lafayette**
City Clerk
3675 Mt. Diablo Blvd.
Suite 210
Lafayette, CA 94549

Document Title

CITY OF LAFAYETTE

STORMWATER MANAGEMENT FACILITIES
OPERATIONS AND MAINTENANCE AND
RIGHT OF ENTRY AGREEMENT

PROJECT: _____

OWNERS NAMES: _____

ASSESSOR'S PARCEL NUMBER: _____

STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AND RIGHT OF ENTRY AGREEMENT

This Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry ("Agreement") is made and entered into this _____ day of _____, 20___, by and between _____, (hereinafter referred to as "Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This Agreement is made and entered into with reference to the following facts:

WHEREAS, the Permanent Stormwater Pollution Prevention Measures (hereinafter referred to as Best Management Practices or "BMP") have been installed in and must be maintained for the property located at _____, Lafayette, Contra Costa County, State of California (APN _____) and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "property" or "real property"); and,

WHEREAS, the Property Owner is the owner of real property more particularly described on the attached as Exhibit A; and,

WHEREAS, the City is the owner of _____ Street and its storm drains that are adjacent to the property (collectively "Street"), and

WHEREAS, the City's Storm Water Pollution Prevention Regulations, Chapter 5-4 of the Lafayette Municipal Code ("Ordinance") requires proper operation and maintenance of the BMP constructed on this property; and,

WHEREAS, the development conditions of approval require that BMP, as shown on the approved Stormwater Control Plan be constructed and properly operated and maintained by the Property Owner; and,

WHEREAS, the City has approved the Stormwater Control Operation and Maintenance Plan prepared by _____on the day of _____, 20 ___, as this plan may be subsequently modified from time to time with City's approval; and,

WHEREAS, the Stormwater Control Operation and Maintenance Plan includes an annual inspection checklist for the BMP constructed on this property, and,

WHEREAS, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the Ordinance and the approved Stormwater Control Plan and Stormwater Control Operation and Maintenance Plan ("Plans"),

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: The Property Owner will make available copies of the approved Plans at the property, with the facility or property manager or other appropriate maintenance personnel, and must maintain the BMP in good working condition acceptable to the City for the life of the project, and in compliance with the Ordinance and the approved Plans. Upon transfer of the property, the Property Owner shall provide the new owner with the current Plans.

SECTION 2

Inspection by Property Owner: The Property Owner, at its own expense, shall conduct annual inspections during the month of _____ or _____ of each year. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control Operation and Maintenance Plan. A qualified independent inspector who is acceptable to the City must inspect the BMP. The Property Owner must submit the inspection report on these BMP to the City Engineer within 30 days after each inspection. A processing fee established in the City's standard fee schedule shall accompany the annual inspection report.

For the first three years after acceptance of the completed development located on the property, Property Owner's inspection and reporting obligations under this section shall be secured by a cash deposit to the City in the amount of $5,000.00. The cash deposit shall be refunded to Property Owner at the end of those three years if Property Owner has timely complied with its inspection and reporting obligations for each of those years. Each failure to conduct an inspection and submit the report in a timely manner shall result in an extension by an additional three years of the period before Property Owner may be refunded its cash deposit.

SECTION 3

Right of Entry and Facility Inspection by the City: The Property Owner hereby grants permission to the City, its authorized agents and employees, and the Central Contra Costa Sanitary District, the Contra Costa County Fire Protection District, County Environmental Health Department, the Contra Costa Mosquito and Vector Control District, and the Regional Water Quality Control Board to enter the property, and to inspect the BMP whenever any of the foregoing entities deems necessary to enforce provisions of the Ordinance. These entities may enter the premises at any reasonable time to inspect the premises and BMP operation, to inspect and copy records related to storm water compliance, and to collect samples and take measurements. Whenever possible, these entities will provide notice prior to entry.

SECTION 4

Failure to Perform Required Facility Repairs or Maintenance by the Property Owner: If the Property Owner or its successors fail to maintain the BMP in good working order and in accordance with the approved Plans and the Ordinance, the City, with prior notice, may enter the property to return the BMP to good working order. The City is under no obligation to maintain or repair the BMP, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this section takes any action to return the BMP to good working order, the Property Owner shall reimburse the City for all the costs incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and the Property Owner will have 30 days to pay the invoice. If the Property Owner fails to pay the invoice within 30 days, the City may secure a lien against the real property of the Property Owner in the amount of such costs. In addition the City may make the cost of abatement of the nuisance caused by the failure to maintain the BMP a special assessment against the property that may be collected at the same time and in the same manner as ordinary municipal taxes are collected as provided in Government Code section 38773.5. This Section 4 does not prohibit the City from pursuing other legal recourse against the Property Owner.

SECTION 5

Indemnity: The Property Owner agrees to defend, indemnify and hold harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City and which are in any way connected with the construction, operation, presence, existence or maintenance of the BMP by the Property Owner, or from any personal injury or property damage that may result from the City or other public entities entering the property under Section 3 or 4. The Property Owner shall maintain liability insurance specifically covering the BMP and City. City shall specify amount of coverage and require proof of insurance to be provided to City on a regular basis as determined by the City.

SECTION 6

Successors and Assigns: The covenants of the Property Owner set forth in numbered Sections 1 through 5 above shall run with the land, and the burdens thereof shall be binding upon each and every part of the property and upon the Property Owner, its successors and assigns in ownership (or any interest therein), for the benefit of Street and each and every part thereof and said covenants shall inure to the benefit of and be enforceable by the City, its successors and assigns in ownership of each and every part of Street.

SECTION 7

Severability: Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

(Signatures on following page)

CITY OF LAFAYETTE:

_____
Steven Falk, City Manager

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

PROPERTY OWNER(S):

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Attachments: Exhibit A
Acknowledgements